January 30, 1998

Mary Cottrell, Secretary
Department of Telecommunications and Energy
100 Cambridge St. 12th Floor
Boston, MA 02202

Re:: DPU/DTE 96-100

Dear Ms. Cottrell,

The undersigned environmental and consumer organizations thank the Department for this opportunity to comment on the proposed emergency regulations. These comments are limited to the specific sections discussed, and do not imply any position on sections not discussed below.

Information Disclosure Requirements (11.06)

Information disclosure about fuel sources and emissions in an integrated electricity system raises complex and difficult issues. There is, after all, no way of identifying what generating sources are producing electrons that are actually entering a customer's building, much less restricting entry to certain electricity sources. It is possible and meaningful to identify which generators are being paid by customers to deliver enough electricity into the grid to match their consumption. We endorse the purpose of the proposed regulations to provide "consistent, accurate, and meaningful information by which to evaluate services" offered by companies in the marketplace, and appreciate the Department's effort to implement this intent in a straightforward manner using available information sources.

Supplier- vs. product-based disclosure. The Department's proposal appears to be designed to avoid a potential problem expressed by a number of parties to the regional disclosure discussions last year. Companies could advertise cleaner sources of electricity, and extract higher prices from "green customers" willing to pay more for cleaner electricity, without changing the mix of resources that actually operate. Ideally, increasing green demand will lead over time to new green projects beyond existing levels, but whether and when this would be the case cannot be determined at this time.

We believe that customers who buy green power will expect that their premiums will result in environmental improvement beyond what would otherwise have occurred. If green marketing were simply to lead to a reshuffling of who pays for existing cleaner resources, or to environmental degradation, there would likely be a serious backlash against green marketing (and potentially, against customer choice generally, especially since the only choices available to residential customers when the market opens may be green choices.) Customers may not have the patience to wait an indeterminable number of years to see if their green marketing leads to environmental improvement.

Two DTE proposals appear directed at avoiding this potential problem. The requirement that disclosure be supplier-based would, in theory, discourage simply reshuffling existing resources among a company's customers. Requiring products that are advertised as environmentally beneficial to exceed minimum renewables and emissions standards would ensure that green customer dollars go to improving environmental performance beyond legal requirements.

We applaud the Department's intent to address these issues. Unfortunately, however, restricting disclosure to the entire portfolios of retail suppliers ("load serving entities") would create other serious problems, and would not necessarily prevent the potential problem illustrated above. We therefore recommend an alternative approach, outlined below, to ensuring that customers who choose to express environmental preferences in their electricity choices get what they pay for.

Potential problems with supplier-based disclosure include:

1) Large companies considering entering the green market would be severely disadvantaged. A 50 MW renewable project might provide 50% of the generation of a small company and less than 1% of the generation of a larger company, for example. Clearly, company-based disclosure would make it impossible for the large company to compete on a level playing field to sign up, say, the 5,000 green customers that might make the project viable. The relative environmental improvement is most likely to be the same whichever company builds the project. Disclosure should encourage large companies to develop green projects, not discourage them.
2) Supplier-based disclosure would effectively prohibit even 100% green companies from offering shades of green to different customers. Customer research has found that many customers will pay a small premium for environmental products, while others will pay much larger premiums for products that make a bigger environmental improvement. Companies should be able to develop product and marketing strategies to appeal to a broad range of green customers, if they choose..
3) Supplier-based disclosure requires drawing arbitrary boundaries around the "load-serving entity" to which the disclosure requirement applies. Could it be as narrow as a green division of a corporation? Any incorporated entity? A corporation and all affiliates? Corporate parents? Regional or national operations? What about the international operations of a transnational corporation that owns a 50% interest in the parent company of a green marketer?

If the boundary is drawn narrowly, to apply only to a division or a corporation, supplier-based disclosure fails to prevent the problems discussed above. A company that wishes to reshuffle existing resources could just set up a green division, or a green subsidiary. The additional costs of setting up separate subsidiaries would make selling green electricity more expensive, however. Resources would be needlessly diverted from supporting green generation to overhead costs. Some companies might even be deterred from entering the green market, especially considering the slim margins already created by the low wholesale standard offer price. And the problem of companies being unable to offer products with different shades of green would still exist.

The more broadly the boundary is drawn, however, e.g., including affiliate and parent companies, the more the first problem above is aggravated – artificially diluting the environmental value of the company's green activities and the impact of the consumer's green dollar. We believe that disclosure of environmental characteristics of affiliates and parents would provide a less meaningful measure of the state and regional environmental impacts directly associated with the consumer's choice of where to spend his or her electricity dollar.

We strongly recommend an alternative approach to assuring that green customer dollars lead to environmental improvement, while avoiding the problems of supplier-based disclosure. Primary disclosure, provided to customers before they sign with suppliers, and in the uniform label, would be based on products – portfolios of resources which customers can choose to support. An report would also be provided to customers, at least annually, on all the products sold by each supplier in each of the two previous years, and the total fuel mix and emissions of the supplier. And portfolio standards for renewables and emissions would apply to all products, as well as companies.

Product-based primary disclosure will allow for maximum flexibility and efficiency in the green market, and provide the most meaningful information about which generators customer dollars are supporting. The annual supplier report will allow those customers who prefer to evaluate the environmental performance of entire companies, including affiliates and parents, as a primary or secondary basis for their decision, would be able to do so. The annual supplier report would also enable competitors and public interest groups to monitor the evolving marketplace and to expose and publicize any problems.

The most effective means of ensuring that green customer dollars result in environmental improvement would be to combine product-based marketing and disclosure with product-based renewables and emissions portfolio standards. Under the Department's proposal, since companies could effectively market only one product, the renewables and emissions standards established in the restructuring law would automatically be product-based as well as company-based. Since every company/product must meet a minimum standard, any green customer premiums would produce environmental improvement above the minimum standard, fulfilling the intent of green customers. So long as renewables and emissions standards remain product-based, as well as company-based,[1] however, the effect of assuring that green customer dollars lead to environmental improvement is preserved, even if companies can market multiple products.

We recognize that the responsibility for establishing Renewables Portfolio Standards regulations lies with the Division of Energy Resources ("DOER"), and that responsibility for Generation Performance Standards for emissions lies with the Department of Environmental Protection ("DEP"). We believe that it would be sufficient, for the purposes of proceeding with disclosure regulations along the lines recommended, to rely on statements of intent from DOER and DEP to implement product-based standards. The DTE could reconsider its approach if DOER or DEP later decided to reconsider a current intention to apply product-based standards. Alternatively, the DTE could state that its adoption of product-based disclosure is based on the presumption that renewables and emission standards will be product-based, and that the product-disclosure regulation will be reconsidered if this turns out not to be the case.

The DTE has also proposed that any advertising of environmentally beneficial electricity options be based on exceeding legal renewables and emission standards, at a minimum. (11.06 (6)(d)) We fully support this proposal. It would be greatly misleading to customers if suppliers were to portray themselves as offering an environmentally beneficial product or service for simply complying with renewables and emissions legal requirements. We recognize that the emissions and renewables standards in the restructuring law will not take effect for a number of years.[2] Therefore, there are no current requirements which would have to be exceeded to support green claims. However, publishing this regulation now is important to give suppliers notice about what will be required to support future green claims, since assembling qualifying portfolios may require substantial lead time.

<u>Settlement periods and accounts</u>. We are concerned about the Department's proposal to require disclosure to be based on hourly settlement periods. A number of customer-preferred renewables operate intermittently, with output correlated with variations in sunlight, wind, and water flow. A requirement that the percentage of renewables in a customer's supply be based on the average of renewables supplied in each hour would make it more expensive to meet customer demand for such resources than allowing averaging over a longer period. Much more renewables capacity would need to supply a given percentage

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[1] Having company-based standards to supplement product-based standards avoids the possibility of a company outside the region (particularly if there is not disclosure and customer choice within the region) exporting its existing clean and/or renewable resources to New England, while ramping up its dirtier resources to meet its domestic regional needs.

[2] We expect the portfolio standard for existing renewables required by the restructuring law will become effective by December 31, 1999, the deadline the law sets for the DOER to determine the level of renewables serving Massachusetts customers by December 31, 1998.

of load, to provide sufficient electricity in periods of low renewables output. During periods of high output, green electricity would likely have to be dumped to the grid.

Most importantly, customers would lose the option of using their electricity dollars to provide sufficient renewables to match their total consumption, or a specific portion of their total consumption, over a longer period of time. We believe that many customers will be happy to pay for renewables generation supplied to the grid during some times that may not match their exact times of use, since they will still be contributing to an equivalent level of environmental improvement. Allowing some averaging of centralized grid-connected renewables is somewhat analogous to the Department's net metering policy for distributed renewables. Net metering customers are effectively credited for their average generation over a period of a month, even if their hourly generation sometimes exceeds their own consumption.

At the other extreme, however, averaging renewables output over an entire year, may create other problems. It may be misleading to customers, for example, for a supplier to meet an annual renewables claim solely using surplus hydro generation during annual peak flow periods. Averaging over monthly or quarterly periods should certainly be acceptable, however.

We appreciate the Department's intent to rely on ISO settlement account information. It is critical for disclosure to be based on comprehensive tracking through the ISO (or potentially through a comprehensive tagging approach). We are concerned, however, that the ISO is not yet prepared to supply the required information. Accordingly, we think it appropriate for the Department to allow disclosure to be based for the first year, but only for the first year, on ownership, unit contracts and other auditable contract trails, as proposed by DOER.

Label required in advertising. The DTE has proposed that labels be required to appear in all newspaper ads. Clearly, this requirement is more feasible with supplier-based disclosure than with product-based disclosure. Assuming the Department allows product-based disclosure, we recommend that this requirement apply only to ads for specific products. It is important, however, that companies file quarterly reports with the Department, at least, including the information in the disclosure label for both products and the company as a whole. The availability of company-based reports on a regular and timely basis is essential for verify the accuracy of any company making green claims based on its overall company performance.

Fuel source characteristics. We generally support the Department's proposed breakout of separate renewable energy technologies. Different technologies have different environmental impacts, and customers differentiate among renewables in their preferences. Surveys show, for example, that customers greatly prefer solar to other renewable and non-renewable energy sources (Attachment 1).[3] Allowing very small percentages of solar to be aggregated with other renewables (as in the DOER proposal) could be very misleading to many customers. Similarly, however, small hydro and large hydro should be disaggregated, as they generally have very different environmental impacts. We recommend the distinction adopted by California, distinguishing between hydro smaller than or larger than 30 MW. At

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[3] Barbara C. Farhar, *Trends in Public Perceptions and Preferences on Energy and Environmental Policy*, National Renewable Energy Laboratory, NREL/TP-461-4857a, March 1993.

the very least, hydro which qualifies under PURPA standards (<80 MW) should be distinguished between larger hydro facilities. And waste-to-energy facilities must be kept separate, as in the proposals by both the DTE and DOER. Customers view waste-to energy plants about the same as coal plants, from an environmental perspective. (See Attachment 1.)

Prospective vs. historical disclosure. We support the DTE proposal to base disclosure on rolling 12 month historical periods, updated quarterly. We agree that for new products, which do not have historical records, allowing disclosure based on a reasonable estimate of the output of owned and contracted units and the average regional system mix. A period of either one quarter or two quarters of disclosure based on estimated prospective sources would be reasonable. (A period of two quarters would average out some seasonal variation in renewables output, allowing for a more consistent and accurate representation of likely annual output). An exception should be considered, however, to allow for prospective disclosure for a full quarter or two quarter period following the implementation of the new wholesale market at ISO-New England. Until the new ISO structure is operative, it may be difficult or especially expensive for any marketers to assemble a portfolio of power from Known Resources.

We believe that allowing prospective disclosure for a full year, as proposed by DOER, is too long, especially when combined with an annual settlement period. This proposal could open the green market to serious abuse. For example, a company might decide to test the waters by signing up green customers for nine months, relying solely on system power. If it decides it likes the market, it could meet its annual claim by buying some renewables during the final quarter. If it decides not to participate in the green market, however, it could simply exit and abandon its green customers without having delivered on its claims. No penalty could likely make up for the loss of credibility to the green market from such behavior. Moreover, such abandoned customers would not be able to revert to the standard offer. At the very least, therefore, should the Department decide to extend the period for which prospective disclosure is allowed, companies making green claims should be required to file quarterly reports with the Department documenting their green supply and activities for the quarter for products and the company as a whole.

Funding of Renewable Resources and Energy Efficiency

The proposed regulations appropriately implement the legislative requirement for all regulated distribution companies to fund renewables through the Massachusetts Technology Park Corporation at the levels specified in the law and for energy efficiency funding.

Net metering

We generally support the Department's proposed net metering regulation. The language of the final sentence of section (7) (d), however, is ambiguous, stating that "[n]et metering customers must still pay the minimum charge for Distribution Service…and all other charges for each kilowatthour delivered by the Distribution Company in each billing period." We assume that the DTE means all other charges for net kilowatthours delivered, since a) it would be impossible to measure gross kilowatt hours delivered with the single meter explicitly permitted in this section; b) it would be contrary to the utility restructuring settlements; and c) it would represent a change in policy that would have the effect of gutting the existing regulation. To avoid any ambiguity, the word "net" should be inserted.

Attachment B. Sample Label.

We support the general format of the label, with the following exceptions:

- Heading: products or companies must not be allowed to make broad, generalized claims such as "Clean, Green, No-Nuke Power" on the label.
- Power sources: we believe that the multiple column table format is unnecessarily confusing. Customers are much more likely to be concerned about the overall fuel mix than the specific proportions from Specified Sources (Known Sources) or Unspecified Sources (System Power). A pie chart, based on the Total column, or just the Total column would be preferable. This change would also allow for elimination of footnote 2, making the label simpler and more accessible. If the DTE believes it essential to differentiate between Known Sources and System Power, it would be clearer to identify System Power as a separate pie chart or row, and to provide a separate breakout of system power below. This was the approach taken in California.
- It is impossible to provide electricity using System Power that includes 0% nuclear generation, as in the example.

Conclusion

We appreciate the difficult task of preparing emergency regulations in such a tight time frame. The credibility of customer choice and the ability of customer choice to influence the mix of generation depends, however, on the Department's regulations. We urge the DTE to adopt the proposed revisions to its regulations. Thank you for your consideration.

Respectfully,

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Union of Concerned Scientists

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